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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,664	09/20/2006	Jorg Meissner	66250(70301)	2801

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EXAMINER	
SWINEHART, EDWIN L	

ART UNIT	PAPER NUMBER
3617	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/593,664	MEISSNER, JORG	
	Examiner	Art Unit	
	Ed Swinehart	3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 February 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *15-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *15-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 17,18,20,25,26,28,29 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the claims, the use of "Velcro" therein renders the claims indefinite, as such is a trademark, and the structure associated therewith is subject to change with time, therefore the metes and bounds of the claims cannot be determined.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 15,16,34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones.

Jones discloses the claimed invention, including a size variable element which is adjustable to the body size of the wearer, and includes buoyancy elements. A first closure element **23** can be used to set the proper size of the element, while a second zipper closure element can be released without altering the first.

Re claim 15 as amended, Jones employs multiple types of buoyancy elements, including permanent and gas inflation. Such meets the claim limitation of "material combinations". Furthermore, the foam sheets by themselves are formed from

combinations of materials, and therefore the newly added limitation to claim 15 fails to define thereover.

5. Claims 15,16,21-24 and 32-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Kea.

Kea discloses the claimed invention, including a size variable element which is adjustable to the body size of the wearer, and includes buoyancy elements. A first closure element **17,18** can be used to set the proper size of the element, while a second closure element can be released without altering the first.

Re claim 15 as amended, Kea discloses the inflation by air. Air is a mixture of different materials, such as oxygen and nitrogen, and therefore the claim as amended fails to define thereover.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 17,18,28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kea.

Kea suggests the interchangeability of fastener types, but fails to specifically mention that the lateral straps as including VELCRO®.

It would have been obvious to the ordinary routineer working in the art at the time of the invention to substitute recognized equivalent fastener types. In this instance,

substitution of VELCRO® tape as is old and well known in the art for the lateral strapping of Kea would have been an obvious choice of design.

While there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness, "the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ."" *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007).

> "When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill."

Id., at 1740, 82 USPQ2d at 1396. We must ask whether the improvement is more than the predictable use of prior art elements according to their established functions. *Id*.

Re claim 18, "towards the back" denotes no specific structure and/or arrangement so as to define over the lateral positioning as shown by Kea.

8. Claims 19-21,30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones in view of Samano.

Jones fails to show an adjustment for the arm opening/ shoulder area.

Samano teaches such adjustment straps **2**.

It would have been obvious to one of ordinary skill in the art at the time of the invention to provide adjustability in the shoulders of Jones as taught by Samano.

Such a combination would have been desirable so as to provide for accommodating users of various sizes.

Re claim 20, VELCRO® is a recognized equivalent to the strap fasteners of Samano, and substitution of one for the other would have been well within the level of skill of the ordinary routineer working in the art at the time of the invention, providing results as would be expected.

9. Applicant's arguments filed 2/11/2009 have been fully considered but they are not persuasive.

Applicant argues that VELCRO®, a trademark, present in the claims does not render such claims indefinite.

The examiner does not agree. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. Just because such a term has become part of the vernacular does not mean such is not still protected by trademark.

Applicant argues that the cords **23** at the sides of the floatation device of Jones do not constitute a releasable closure.

The examiner does not agree. The sides will be "open" until "closed" by the threading of the lace through the spaced eyelets. The lacing can inherently be removed as desired.

Applicant's arguments re claim 15 as amended are noted, and have been discussed within the body of the rejection. It should be noted that the elements, oxygen, nitrogen, etc., are considered "materials" as claimed, as such are made of matter.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ed Swinehart whose telephone number is 571-272-6688. The examiner can normally be reached on Monday through Thursday 6:30 am to 2:00 pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ed Swinehart/
Primary Examiner
Art Unit 3617